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TECH CENTER 1000/2900

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#29

Inventor	:	W. Roy KNOWLES, M.D.
Serial No.	:	09/619,412 09/619142
Filing Date	:	19 July 2000
Title	:	Hair Loss Prevention
Group Art	:	1598
Examiner	:	Vickie KIM

Commissioner of Patents and Trademarks  
Office of Petitions  
Washington, DC 20231  
Facsimile (703) 308-6916

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PETITIONS OFFICE

PETITION

Applicants respectfully requests that the Appeal in this case be reinstated and the case forwarded to the Board of Patent Appeals & Interferences.

I. STATEMENT OF FACTS

1. The Examiner in this case is refusing to allow her actions to be reviewed by the Board of Patent Appeals and Interferences. The Office now has the opportunity to have the Examiner's actions reviewed inside the Patent & Trademark Office, by the Board, rather than outside the Office.

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PETITION (30-Mar-03)

2. This application has been the subject of *five* Office Actions. None raise any valid basis to denying the claims. The Examiner concedes this, but refuses - repeatedly - to allow the Board the opportunity to review her actions.

3. When this application was filed, it was accompanied by an INFORMATION DISCLOSURE STATEMENT and a PETITION TO MAKE SPECIAL making various references of record. The first OFFICE ACTION conceded the claims were patentable over most of these (perhaps two dozen) references (*e.g.*, Rajadhyaksha). The OFFICE ACTION, however, rejected the claims over certain of them (*e.g.*, Bazzano, Orentreich). In response, Applicant filed a REPLY together with a RULE 131 DECLARATION and a RULE 132 DECLARATION.

4. The Examiner approved and entered the DECLARATIONS, and conceded the rejections raised in the first OFFICE ACTION were baseless. The Examiner, however, then rejected the claims relying on a reference (Rajadhyaksha) which the Examiner (in the first OFFICE ACTION) had already conceded does not enable the claims.

5. Applicant thus filed an Appeal. The APPEAL BRIEF Section I was titled, "Formalities." The Examiner refused to enter the APPEAL BRIEF. The Examiner said that while 37 C.F.R. 1.192 allows use of any "appropriate" heading, the Examiner requires headings which recite the Examiner's preferred phrasing verbatim. This obstructionism is not permitted by statute nor Rule; it was intended solely to delay or prevent review of the Examiner's work by the Board. Nonetheless, in a spirit of cooperation, Applicant changed the headings. The Examiner then entered the APPEAL BRIEF and held a conference with the PTO's Mr. Robert Hill, who advised the Examiner that her rejections were baseless.

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6. The Examiner accordingly refused to file any REPLY BRIEF, nor forward the case to the Board. Instead, over Applicant's objection, the Examiner reopened prosecution. Her third OFFICE ACTION – surprisingly - rejected the claims on references already of record, already reviewed by her, and already conceded by her to be inapposite. Troublingly, the Examiner also said that the DECLARATIONS the Office had previously approved of and entered into the case were now considered defective. This is troubling, because the Office lacks legal authority to reject and remove from the record a DECLARATION the Office has already approved of and entered into the record.

7. Nonetheless, Applicant filed an AMENDMENT.

8. The Examiner approved of and entered the AMENDMENT. Predictably, however, the claims were again rejected. Curiously, the fourth OFFICE ACTION relied on references already of record in the prior three OFFICE ACTIONS, and conceded by the Examiner to be inapposite.

9. Applicant thus (again) filed a NOTICE OF APPEAL and APPEAL BRIEF.

10. The Examiner refuses to file a REPLY BRIEF. This is not problematic; the M.P.E.P. does not require a REPLY BRIEF to be filed; where the Examiner refuses or declines to file one, the appeal is reviewed unopposed.

11. Very troubling, however, is the Examiner's disregard for M.P.E.P. deadlines. The M.P.E.P. requires the Examiner to act on the appeal within two months. Here, the Examiner sat on the file for *an entire year*, doing nothing at all, refusing to even forward the case to the Board.

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12. Now, the Examiner seeks to reopen prosecution again. She has issued a fifth OFFICE ACTION. It is as baseless as the previous four. It rejects the claims over references (e.g., Gibson, Bazzano, Orentreich, Grollier) and for reasons the previous four OFFICE ACTIONS *have already conceded* do not bar the claims.

5 13. More troublingly, the Examiner is again attempting to alter the P.T.O. record; she is trying to remove from the record the AMENDMENT the Office previously approved of and entered.

14. The Examiner is without legal authority to remove from the record an already-entered AMENDMENT, nor otherwise alter nor manipulate Office records.

10 15. The Examiner refuses to allow the Board to review her actions. This is understandable, as her work is arguably harassing, even vindictive. Nonetheless, the Office may prefer the Examiner's actions be reviewed internally, by the Board, rather than elsewhere.

15 II. POINT TO BE REVIEWED

16. Whether the Appeal may be reinstated and the APPEAL BRIEF forwarded to the Board for immediate review?

III. ACTION REQUESTED

20 14. Applicants respectfully requests that:

- A. the Examiner be prohibited from altering the existing prosecution file, and specifically be prohibited from attempting to remove from the record nor contest

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the validity of any AMENDMENT, DECLARATION or other submission previously  
accepted by the Office and entered into the file;

B. the Appeal be reinstated and the APPEAL BRIEF be forwarded immediately to the  
Board of Patent Appeals and Interferences for review;


C. the Board be reminded that any ground for rejection which has already been raised  
by the Examiner and not maintained by the Examiner on appeal, operates as a  
concession by the Office that such ground is unfounded (*i.e.*, the Board is estopped  
from re-litigating these issues); and

D. the Board be instructed that its decision on the Appeal must be rendered within  
sixty calendar days after the filing date of this Petition.

#### IV. ENCLOSURES

17. I enclose a FEE TRANSMITTAL FORM together with the required petition fee.

Respectfully submitted,

  
Mark Pohl, Esq., Reg. No. 35,325  
Pharmaceutical Patent Attorneys LLC  
55 Madison Avenue, 4th floor  
Attn: Mark POHL (P4014)  
Morristown, NJ 07960-7397  
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30 March 2003

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PTO/SB/21 (08-00)

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Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

<b>TRANSMITTAL FORM</b> <i>(to be used for all correspondence after initial filing)</i>	Application Number	09/619,412 09/619142
	Filing Date	19 July 2000
	First Named Inventor	W. Roy KNOWLES, M.D.
	Group Art Unit	1598
	Examiner Name	Vickie KIM
Total Number of Pages in This Submission	Attorney Docket Number	KnowITech

ENCLOSURES (check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers (for an Application) <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input checked="" type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks These papers are being submitted by facsimile with a confirmation copy by First Class Mail.		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	Pharmaceutical Patent Attorneys, LLC Pohl & Assoc.
Signature	<i>J. M. Pohl</i>
Date	See below date

CERTIFICATE OF MAILING	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date: <u>see below date</u>	
Typed or printed name	Mark POHL, Reg. No. 35325
Signature	<i>J. M. Pohl</i>
Date	30 March 03

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

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I hereby certify that this correspondence is being facsimile transmitted to the  
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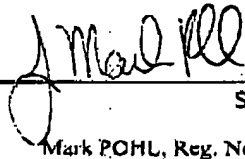
on 30 March 03

Date

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Signature

Mark POHL, Reg. No. 35,325

Typed or printed name of person signing Certificate

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**FEE TRANSMITTAL  
for FY 2002**

Patent fees are subject to annual revision.

**TOTAL AMOUNT OF PAYMENT (\$)** 130.00**Complete if Known**

Application Number	09/619,142
Filing Date	19 July 2000
First Named Inventor	W. Roy KNOWLES, M.D.
Examiner Name	Vickie KIM
Group Art Unit	1598
Attorney Docket No.	KnowlTech Inc.

METHOD OF PAYMENT		FEE CALCULATION (continued)																																																																																																																																																																																								
<b>1.</b> <input type="checkbox"/> The Commissioner is hereby authorized to charge indicated fees and credit any overpayments to: Deposit Account Number <input type="text"/> Deposit Account Name <input type="text"/> <input type="checkbox"/> Charge Any Additional Fee Required Under 37 CFR 1.16 and 1.17 <input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27		<b>3. ADDITIONAL FEES</b> <span style="float: right;">MAR 29 2003</span> <table border="1"> <thead> <tr> <th>Fee Code</th> <th>Large Entity Fee (\$)</th> <th>Small Entity Fee (\$)</th> <th>Fee Description</th> <th>Fee Paid</th> </tr> </thead> <tbody> <tr><td>105</td><td>130</td><td>205</td><td>65</td><td>Surcharge - late filing fee or unit</td><td>0.00</td></tr> <tr><td>127</td><td>50</td><td>227</td><td>25</td><td>Surcharge - late provisional filing fee or cover sheet</td><td>0.00</td></tr> <tr><td>139</td><td>130</td><td>139</td><td>130</td><td>Non-English specification</td><td>0.00</td></tr> <tr><td>147</td><td>2,520</td><td>147</td><td>2,520</td><td>For filing a request for ex parte reexamination</td><td>0.00</td></tr> <tr><td>112</td><td>920*</td><td>112</td><td>920*</td><td>Requesting publication of SIR prior to Examiner action</td><td>0.00</td></tr> <tr><td>113</td><td>1,840*</td><td>113</td><td>1,840*</td><td>Requesting publication of SIR after Examiner action</td><td>0.00</td></tr> <tr><td>115</td><td>110</td><td>215</td><td>55</td><td>Extension for reply within first month</td><td>0.00</td></tr> <tr><td>116</td><td>400</td><td>216</td><td>200</td><td>Extension for reply within second month</td><td>0.00</td></tr> <tr><td>117</td><td>920</td><td>217</td><td>460</td><td>Extension for reply within third month</td><td>0.00</td></tr> <tr><td>118</td><td>1,440</td><td>218</td><td>720</td><td>Extension for reply within fourth month</td><td>0.00</td></tr> <tr><td>128</td><td>1,980</td><td>228</td><td>980</td><td>Extension for reply within fifth month</td><td>0.00</td></tr> <tr><td>119</td><td>320</td><td>219</td><td>160</td><td>Notice of Appeal</td><td>0.00</td></tr> <tr><td>120</td><td>320</td><td>220</td><td>160</td><td>Filing a brief in support of an appeal</td><td>0.00</td></tr> <tr><td>121</td><td>280</td><td>221</td><td>140</td><td>Request for oral hearing</td><td>0.00</td></tr> <tr><td>138</td><td>1,510</td><td>138</td><td>1,510</td><td>Petition to institute a public use proceeding</td><td>0.00</td></tr> <tr><td>140</td><td>110</td><td>240</td><td>55</td><td>Petition to revive - unavoidable</td><td>0.00</td></tr> <tr><td>141</td><td>1,280</td><td>241</td><td>640</td><td>Petition to revive - unintentional</td><td>0.00</td></tr> <tr><td>142</td><td>1,280</td><td>242</td><td>640</td><td>Utility issue fee (or reissue)</td><td>0.00</td></tr> <tr><td>143</td><td>460</td><td>243</td><td>230</td><td>Design issue fee</td><td>0.00</td></tr> <tr><td>144</td><td>620</td><td>244</td><td>310</td><td>Plant issue fee</td><td>0.00</td></tr> <tr><td>122</td><td>130</td><td>122</td><td>130</td><td>Petitions to the Commissioner</td><td>130.00</td></tr> <tr><td>123</td><td>50</td><td>123</td><td>50</td><td>Processing fee under 37 CFR 1.17(e)</td><td>0.00</td></tr> <tr><td>126</td><td>180</td><td>126</td><td>180</td><td>Submission of Information Disclosure Stmt</td><td>0.00</td></tr> <tr><td>581</td><td>40</td><td>581</td><td>40</td><td>Recording each patent assignment per property (lines number of properties)</td><td>0.00</td></tr> <tr><td>146</td><td>740</td><td>246</td><td>370</td><td>Filing a submission after final rejection (37 CFR § 1.129(a))</td><td>0.00</td></tr> <tr><td>149</td><td>140</td><td>249</td><td>70</td><td>For each additional invention to be examined (37 CFR § 1.129(b))</td><td>0.00</td></tr> <tr><td>178</td><td>740</td><td>279</td><td>370</td><td>Request for Continued Examination (RCE)</td><td>0.00</td></tr> <tr><td>169</td><td>900</td><td>169</td><td>900</td><td>Request for expedited examination of a design application</td><td>0.00</td></tr> <tr><td colspan="4">Other fee (specify)</td><td>0.00</td></tr> <tr> <td colspan="4"><b>SUBTOTAL (3)</b></td> <td><b>(\$)</b> 130.00</td> </tr> </tbody> </table>		Fee Code	Large Entity Fee (\$)	Small Entity Fee (\$)	Fee Description	Fee Paid	105	130	205	65	Surcharge - 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<b>2. EXTRA CLAIM FEES</b> Total Claims <input type="text"/> 0 -20** = <input type="text"/> 0 x <input type="text"/> 9.00 = <input type="text"/> 0.00 Independent Claims <input type="text"/> 6 -3** = <input type="text"/> 3 x <input type="text"/> 42.00 = <input type="text"/> 0.00 Multiple Dependent <input type="text"/> <input type="text"/> = <input type="text"/> 0.00  <table border="1"> <thead> <tr> <th>Large Entity Fee Code (\$)</th> <th>Small Entity Fee Code (\$)</th> <th>Fee Description</th> <th>Fee Paid</th> </tr> </thead> <tbody> <tr><td>103</td><td>18</td><td>203</td><td>9</td><td>Claims in excess of 20</td><td></td></tr> <tr><td>102</td><td>84</td><td>202</td><td>42</td><td>Independent claims in excess of 3</td><td></td></tr> <tr><td>104</td><td>280</td><td>204</td><td>140</td><td>Multiple dependent claim, if not paid</td><td></td></tr> <tr><td>109</td><td>84</td><td>209</td><td>42</td><td>** Reissue independent claims over original patent</td><td></td></tr> <tr><td>110</td><td>18</td><td>210</td><td>9</td><td>** Reissue claims in excess of 20 and over original patent</td><td></td></tr> </tbody> </table> <b>SUBTOTAL (2)</b> <b>(\$)</b> 0.00		Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid	103	18	203	9	Claims in excess of 20		102	84	202	42	Independent claims in excess of 3		104	280	204	140	Multiple dependent claim, if not paid		109	84	209	42	** Reissue independent claims over original patent		110	18	210	9	** Reissue claims in excess of 20 and over original patent		<b>1. BASIC FILING FEE</b> <table border="1"> <thead> <tr> <th>Large Entity Fee Code (\$)</th> <th>Small Entity Fee Code (\$)</th> <th>Fee Description</th> <th>Fee Paid</th> </tr> </thead> <tbody> <tr><td>101</td><td>740</td><td>201</td><td>370</td><td>Utility filing fee</td><td>0.00</td></tr> <tr><td>106</td><td>330</td><td>206</td><td>165</td><td>Design filing fee</td><td>0.00</td></tr> <tr><td>107</td><td>510</td><td>207</td><td>255</td><td>Plant filing fee</td><td></td></tr> <tr><td>108</td><td>740</td><td>208</td><td>370</td><td>Reissue filing fee</td><td></td></tr> <tr><td>114</td><td>160</td><td>214</td><td>80</td><td>Provisional filing fee</td><td></td></tr> </tbody> </table> <b>SUBTOTAL (1)</b> <b>(\$)</b> 0.00		Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid	101	740	201	370	Utility filing fee	0.00	106	330	206	165	Design filing fee	0.00	107	510	207	255	Plant filing fee		108	740	208	370	Reissue filing fee		114	160	214	80	Provisional filing fee																																																																																																																				
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\*\*or number previously paid, if greater. For Reissues, see above

\*Reduced by Basic Filing Fee Paid

**SUBTOTAL (3)** **(\$)** 130.00

SUBMITTED BY		Complete (if applicable)	
Name (Print/Type)	Mark POHL, Esq.	Registration No. (Attorney/Agent)	35,325
Signature		Telephone	(973) 984-0076
		Date	30 March 03

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